1—252

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~324.~~ 78

REUBEN WRIGHT, PLAINTIFF IN ERROR,

vs.

JONAS M. TEBBITTS.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED NOVEMBER 7, 1873.

SUPREME COURT OF THE UNITED STATES.

No. 324.

REUBEN WRIGHT, PLAINTIFF IN ERROR,

vs.

JONAS M. TEBBITTS.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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1 The answer of the chief-justice and justices of the supreme court of the District of Columbia, within named.

The record and proceedings whereof mention is within made, follow in these words, to wit:

Declaration.—Filed June 5th, 1869.

In the supreme court of the District of Columbia, the 5th day of June, 1869.

JONAS M. TEBBITTS, PLAINTIFF,
vs.
REUBEN WRIGHT, DEFENDANT.

2 The plaintiff sues the defendant for money payable to the defendant by the plaintiff, for work and labor done and professional services rendered by the plaintiff for the defendant at his request, and the plaintiff claims the amount of two thousand and fifty-four dollars, according to the annexed particulars of demand.

CHIPMAN & HOSMER,
Attys. for Plff.

The defendant is to plead hereto on or before the first special term of the court, occurring twenty days after service hereof; otherwise judgment.

CHIPMAN & HOSMER,
Attys. for Plff.

Bill of particulars.

Reuben Wright, in acc. with Jonas M. Tebbetts, Dr.

1869.
June 5.

3 To $\frac{1}{10}$th of money received from the Choctaw Indians, under the 50th article of the treaty of April 28th, 1866, agreeably with the stipulations of contract from said Wright to said Tebbetts, dated Aug. 9th, 1866, namely: Amt. rec'd of said Indians by said Wright, through the United States, under said treaty, $20,540.00.

One-tenth of said sum..... $2,054 00

CHIPMAN & HOSMER,
Attys. for Tebbetts.

Summons.—Issued June 5, 1869.

In the supreme court of the District of Columbia, the 5th day of June, 1869.

JONAS M. TEBBETTS, PLAINTIFF,
v.
REUBEN WRIGHT, DEFENDANT. } At law. No. 5841.

The President of the United States to the defendant, greeting:

You are hereby commanded to appear in this court on the first

4 day of its special term, occurring twenty days after service of this writ on you, to answer the plaintiff's suit, and show why he should not have judgment against you for the cause of action stated in his declaration.

Witness D. K. Cartter, chief-justice.

[SEAL OF COURT.] R. J. MEIGS, *Clerk.*

C. & H.

NOTE.—The special terms of the court commence on the first Tuesday of every month, except May, in which month they commence on the third Monday, and August, in which month there is no term of the court.

On back: Served copies of the declaration, notice to plead, and this summons, on the defendant, the 5th day of June, 1869.

ALEXR. SHARP,
U. S. Marshal of D. C.

5 *Defendant's demurrer.—Filed July 7th*, 1869.

In the supreme court of the District of Columbia.

JONAS M. TEBBETTS
v.
REUBEN WRIGHT. } At law. No. 5841. Defendant's demurrer.

The defendant says that the plaintiff's declaration is bad in substance.

EDWIN L. STANTON,
Defendant's Attorney.

Marginal note of a matter of law to be argued under this demurrer:

One of the matters of law intended to be argued, is that the plaintiff cannot by the present action enforce a contract, assigning to the plaintiff a portion of a claim under a treaty of the United States.

EDWIN L. STANTON,
Defendant's Attorney.

Joinder in demurrer.—Filed Octo. 2d, 1860.

In the supreme court of the District of Columbia.

TEBBITTS
v.
WRIGHT. } At law. No. 5841.

The plaintiff says that the declaration is good in substance.

R. D. MUSSEY,
Attorney for Plff.

6 Proceedings before the supreme court of the District of Columbia, holding a special term and circuit court for said district, commencing the third Monday (23 day) of January, A. D. 1871.

MONDAY, *January 23d*, 1871.

The court commences its session by proclamation of the marshal, by order of Chief-Justice Cartter, presiding.

SATURDAY, *April* 8, 1871.

Session resumed pursuant to adjournment, Chief-Justice Cartter, presiding.

JONAS M. TEBBETTS, PLFF., *v.* REUBEN WRIGHT, DEFT. } At law. No. 5841. Cal. 143.

Upon argument of defendant's demurrer to the plaintiff's declaration, and being fully advised therein, it is considered that said de-
7 murrer be, and the same is hereby, sustained; and leave is granted plaintiff to amend his declaration as he may be advised.

Amended declaration.—Filed April 13, 1871.

In the supreme court of the District of Columbia, the 13th day of April, 1871. At law.

JONAS M. TEBBETTS *v.* REUBEN WRIGHT. } At law. 5841. Amended declaration.

The plaintiff sues the defendant for money payable by the defendant to the plaintiff for goods sold and delivered by the plaintiff to the defendant; and for work done and materials provided by the plaintiff for the defendant, at his request; and for money lent by the plaintiff to the defendant; and for money paid by the plaintiff for the defendant,
8 at his request; and for money received by the defendant for the use of the plaintiff; and for money found to be due from the defendant to the plaintiff on accounts stated between them.

2d. The plaintiff sues the defendant for money payable by the defendant to the plaintiff for professional services rendered by the plaintiff to the defendant, at his request, before the commission appointed by the President of the United States under and by virtue of the provisions of the 50th article of the "Treaty between the United States of America and the Choctaw and Chickasaw Indians, concluded April 28, 1866; ratification advised with amendments June 28, 1866; amendments accepted July 2, 1866; proclaimed July 10, 1866. (14 St. at Large, p. 769.)

3rd. The plaintiff sues the defendant for money payable by the defendant to the plaintiff, for that the said defendant, heretofore, to wit, on or about August 9, 1866, at Washington City, D. C., in consideration
9 that the said plaintiff had rendered the said defendant valuable services in securing his, the said defendant's, claims under the 50th article of the "Treaty between the United States of America and the Choctaw and Chickasaw Indians," concluded April 28th, 1866, &c., (14 Stat. at Large, p. 769,) undertook, and then and there faithfully promised the said plaintiff, to pay him one-tenth of whatever he might realize from the Choctaw Indians under said article whenever the money came into his, the said defendant's, hands; and that thereafter, to wit, on or about the 5th day of June, 1869, there was paid to him, the said defendant, under said article of said treaty, the sum of twenty thousand five hundred and forty $\frac{x}{100}$ dollars, and thereupon the said defendant became indebted unto and liable to pay to the said plaintiff the sum of two thousand and fifty-four $\frac{x}{100}$ dollars, which sum,
10 though often requested so to do, the said defendant has not

paid to the said plaintiff, nor any part thereof, but the said defendant to pay him, the said plaintiff, the same has hitherto wholly neglected and refused, and still does neglect and refuse.

And the plaintiff claims two thousand and fifty-four $\frac{x}{100}$ dollars, ($2,054.00,) according to the annexed particulars of demand, together with interest from the 5th day of June, 1869, and the costs of this suit.

R. D. MUSSEY,
Attorney for Plaintiff.

NOTE.—The defendant is to plead hereto on or before the first special term of the court, occurring twenty days after service hereof; otherwise judgment.

R. D. MUSSEY,
Attorney for Plaintiff.

11 *Bill of particulars.*

Reuben Wright to Jonas M. Tebbitts, Dr.

For professional services rendered for the defendant, at his request, before the commission appointed under the 50th article of the treaty between the United States of America and the Choctaw and Chickasaw Indians, &c., &c., (14 Stat. at Large, p. 769,) in securing the claims of the said Reuben Wright under said article of said treaty, at the rates of compensation fixed by said Reuben Wright, ($2,054.00) two thousand and fifty-four $\frac{x}{100}$ dollars.

Affidavit of plaintiff.

JONAS M. TEBBITTS, being duly sworn, says:

I. I make this affidavit under the 75th rule of the court to be filed with the declaration in the suit No. 5841 at law, supreme court
12 of the District of Columbia, in which I am plaintiff and Reuben Wright defendant.

II. I claim from the defendant the sum of $2,054.00, with interest from the 5th day of June, 1869, which is the amount due me from the defendant for professional services rendered him, the said defendant, in procuring the allowance of his claim against the Choctaw Indians under and in accordance with the 50th article of the treaty between the United States of America and the Choctaw and Chickasaw Indians, &c., (14 St. at Large, p. 769,) being the one-tenth of the amount received by him for his said claims under said article of said treaty, which was the compensation he agreed to pay me for said services.

III. This sum claimed is exclusive of all set-offs and just grounds of defence.

JONAS M. TEBBETTS.

UNITED STATES OF AMERICA,
District of Columbia, ss:

13 Personally appeared before me at Washington, D. C., this 11th day of April, 1871, Jonas M. Tebbitts, and made oath that the foregoing affidavit by him subscribed in my presence is true, according to his best knowledge, information, and belief.

[COMMISSIONER'S SEAL.] JOHN J. JOHNSON,
United States Commissioner for the District of Columbia.

Pleas to amended narr.—Filed June 6, 1871.

In the supreme court of the District of Columbia.

JONAS M. TEBBITTS, PLAINTIFF,
v.
REUBEN WRIGHT, DEFENDANT. } At law. No.

Defendant's pleas to plaintiff's declaration as amended.

1st. For a plea to the 1st, 2nd, and 3d counts of the plaintiff's declaration as amended, the defendant says that the alleged cause of
14 action did not accrue within three years before this suit.

2d. For a further plea to the 1st & 2d counts of said declaration, the defendant says that he never was indebted as alleged.

3d. For a further plea to the 3d count of said declaration, the defendant says that the said promise therein alleged was without consideration.

4th. For a further plea to the 3d count of said declaration, the defendant says that the plaintiff had not, at the time of the promise therein alleged, rendered to the defendant services as therein alleged.

5th. For a further plea to the 3d count of said declaration, the defendant says that he never promised as therein alleged.

6th. For a further plea to the 1st, 2d, and 3d counts of said declaration, the defendant says that after the said claims accrued, and before this suit, the plaintiff released the defendant therefrom.

EDWIN L. STANTON,
Attorney for Defendant.

15 *Joinder of issue.—Filed June* 17, 1871.

In the supreme court of the District of Columbia.

TEBBITTS
v.
WRIGHT. } At law. No. 5841.

The plaintiff takes issue upon the defendant's pleas.

R. D. MUSSEY,
Attorney for Plff.

Proceedings before the supreme court of the District of Columbia, holding a special term and circuit court for said district, commencing the fourth Monday (22d day) of January, A. D. 1872.

MONDAY, *January 22d*, 1872.

By order of Justice MacArthur, presiding, the court is opened by proclamation of the marshal, pursuant to the rule of court.

16 MONDAY, *February* 26, 1872.

The court resumes its session pursuant to adjournment. MacArthur, justice, presiding.

JONAS M. TEBBITTS, PLFF.,
v.
REUBEN WRIGHT, DEFT. } At law. No. 5841. Cal. 48.

And now come here as well the plaintiff, by his attorney, Mr. Mussey,

as the defendant, by his attorney, Mr. Stanton, and a jury of good and lawful men of this District, to wit: James Nourse, Wilson King, John Reynolds, James H. Ferguson, George R. Thompson, George Upperman, Joseph P. Stanley, George W. Hatton, Albert G. Hall, James Lavender, Wilson C. Brown, and Henry Polkinghorn, who, being sworn to try the issue above joined, on their oath say they find the same in favor of the plaintiff; and that the money payable to him by the
17 defendant by reason of the premises, is the sum of two thousand and fifty-four dollars, with interest thereon from June 5th, A. D. 1869, besides costs.

Motion for a new trial.—Filed February 26, 1872.

In the supreme court of the District of Columbia.

TEBBITTS v. WRIGHT. } At law. No. 5841.

The defendant moves for a new trial on bill of exceptions taken at the trial.

E. L. STANTON,
Atty. for Defendant.

Bills of exception.—Filed April 27, 1872.

FIRST BILL.

In the supreme court of the District of Columbia.

18 JONAS M. TEBBITTS v. REUBEN WRIGHT. } At law. No. 5841.

At the trial of this cause the plaintiff offered and gave testimony showing that the plaintiff is a lawyer by profession, and that, in the month of August, 1866, the defendant had a claim pending before the commission appointed under the 50th article of the treaty between the United States and the Choctaw and Chickasaw Indians, (14 Statutes at Large, page 769,) and that the plaintiff rendered services by appearing before said commissioners on one occasion, viz, in August, 1866, presenting an argument in behalf of said claim; and that, on a day thereafter, to wit, the 9th day of August, 1866, defendant voluntarily, and without being requested so to do by the plaintiff, made in writing the following contract with him; and plaintiff proved the genuineness of said writing as follows:

19 "Jonas M. Tebbetts having rendered valuable services to me in securing my claims under the 50th article of the treaty of Apl. 28th, with the Choctaw and Chickasaws, I hereby bind myself to pay him one-tenth of whatever I may realize from the Choctaw Indians under said article, whenever the money comes into my hands, which payment, when made, will be in full compliance with my verbal contract made in April last with John B. Luce.

"Washington, Aug. 9, 1866.

"REUBEN WRIGHT.

"In the presence of—
"J. B. LUCE."

[5-cent rev. stamp.]

And that defendant had not complied therewith, though requested thereto; and upon the cross-examination of plaintiff and his witnesses, it was proved that said claim was not allowed by said commissioners until August, 1867; and that subsequently said commissioners held sessions at many places in the Indian Territory for and against
20 said claim, and arguments were made and filed before them for and against said claim; but that there afterwards said defendant was represented by other counsel, and not by plaintiff, nor did plaintiff do anything further; and that after a favourable award by commissioners, opposition was made before the Secretary of the Interior in order to prevent his approval of the same; and after he had favorably recommended the same to Congress, opposition thereto was made in Congress, and that the said claim was not finally allowed and paid until June, 1869; and plaintiff also gave in evidence documentary evidence, as follows:

TREASURY DEPARTMENT,
SECOND AUDITOR'S OFFICE,
February 19th, 1872.

I hereby certify that it appears from the records of this office, of which I am the legal custodian, that the annexed is a true copy of orig-
21 inal certificate, № 5483, issued by this office in favor of Reuben Wright.

[SEAL OF SEC'D AUDITOR.] E. B. FRENCH,
Second Auditor U. S. Treasury.

H. L. S., 76.

Be it known that E. B. French, who certified the foregoing, is now, and was at the time of so doing, Second Auditor of the Treasury of the United States, and the legal custodian of the records of the Second Auditor's Office, and full faith and credit are due his official attestations.

In testimony whereof I, George S. Boutwell, Secretary of the Treasury of the United States, have hereunto set my hand and caused to be affixed the seal of the Treasury Department, at the city of Washington, in the District of Columbia, this twentieth day of February, in the year A. D. 1872.

[SEAL OF U. S. TREASURY.] GEO. S. BOUTWELL,
Secretary of the Treasury.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., Nov. 6th, 1867.

22 SIR: On the 10th of August last two claims, under the 50th article of the treaty of April 28, 1866, with the Choctaws and Chickasaws, one in favor of Jos. G. Heald for $70,288.80; the other in favor of Reuben Wright for 20,786.76, were refer'ed to you for settlement. The sum of 10,000 was to be paid on said claims, as follows: $7,717.64 to Mr. Heald, present, and $2,282.36 to Mr. Wright, at such place as should be thereafter designated.

Mr. Wright is now here, and the amount of his share, 2,282.36 will be paid to him, care of Messrs. Watterson and Crawford, of this city.

Very respectfully, your obt. servt.,

CHARLES E. MIX,
Acting Commissioner.

Hon. E. B. FRENCH,
2nd Auditor of the Treasury.

SECOND AUDITOR'S OFFICE,
Nov. 6, 1867.

$2,282.36.

23 CHAS. W. FORREST.

SECOND COMPTS. OFFICE,
Nov. 7, 1867.
GEO. D. ABBOT.

No. 5483.] (Form No. 58.) [8932.

Appropriation: Trust-fund. Interest due Choctaws. General fund, $2,282.36.

TREASURY DEPARTMENT,
SECOND AUDITOR'S OFFICE,
Nov. 6th, 1867.

I certify that there is due from the United States to Reuben Wright the sum of two thousand two hundred eighty-two $\frac{36}{100}$ dollars, being the amot. of the account pro rata of $10,000, allowed by decision of Secy. Interior, under an award of commissioners provided for by 50th article of 28th April, 1866, with the Choctaw and Chickasaw Indians.

24 To be paid to Reuben Wright, care of Watterson & Crawford, City of Washington, as appears from the statement and vouchers herewith transmitted for the decision of the Second Comptroller of the Treasury thereon.

E. B. FRENCH,
Second Auditor.

To the SECOND COMPTROLLER OF THE TREASURY.

SECOND COMPTROLLER'S OFFICE.

I admit and certify the above this 7th day of November, 1867.

J. M. BROADHEAD,
Second Comptroller.

TREASURY DEPARTMENT,
SECOND AUDITOR'S OFFICE,
February 19th, 1872.

I hereby certify that it appears from the records of this office, of which I am the legal custodian, that the annexed is a true copy of orig-
25 inal certificate ℳ 8687, issued by this office in favor of Reuben Wright.

[AUDITOR'S SEAL.]

E. B. FRENCH,
Second Auditor U. S. Treasury.

H. L. S., 76.

Be it known that E. B. French, who certified the foregoing, is now,

and was at the time of so doing, Second Auditor of the Treasury of the United States, and the legal custodian of the records of the Second Auditor's Office, and full faith and credit are due his official attestations.

In testimony whereof I, George S. Boutwell, Secretary of the Treasury of the United States, have hereunto set my hand and caused to be affixed the seal of the Treasury Department, at the City of Washington, in the District of Columbia, this twentieth day of February, in the year A. D. 1872.

[SEAL OF TREASURY DEPT.] GEO. S. BOUTWELL,
Secretary of the Treasury.

26 *The United States, Dr., to Reuben Wright.*

For the sum of	$18,258 92
Being the balance due him as awarded by a board of commissioners and award approved by the Secretary of the Interior, August 9, 1867. See settlement, No. 5483, Nov. 7, 1867, as appears by letters of Secretary of the Interior and Commissioner of Indian Affairs, filed in this office and herewith	18,258 92
	$18,258 92

TREASURY DEPARTMENT,
SECOND AUDITOR'S OFFICE,
June 2, 1869.
A. F. WIGHT.

2d COMPT. OFFICE, *June 3d*, 1869.
GEO. D. ABBOT.

No. 8687.] (Form No. 58.)

27 Appropriation: Trust-fund. Stock rede'med and due Choctaw school-fund, $18,258.92.

TREASURY DEPARTMENT,
SECOND AUDITOR'S OFFICE,
June 2nd, 1869.

I certify that there is due from the United States to Reuben Wright the sum of eighteen thousand two hundred and fifty-eight dollars and ninety-two cents, being the amount of his account for the balance of $20,541.28, awarded to him by board of commissioners. Award approved by Secretary of the Interior, August 9, 1867, to be paid to Reuben Wright, claimant, present, as appears from the statement and vouchers herewith transmitted for the decision of the Second Comptroller of the Treasury thereon.

E. B. FRENCH,
Second Auditor.

To the SECOND COMPTROLLER OF THE TREASURY.

28 SECOND COMPTROLLER'S OFFICE.

I admit and certify the above this 3rd day of June, 1869.
J. M. BROADHEAD,
Second Comptroller.

TREASURY DEPARTMENT, REGISTER'S OFFICE,
February 20, 1872.

Pursuant to the act of March 3, 1797, entitled "An act to provide more effectually for the settlement of accounts between the United States and receivers of public moneys," I, John Allison, Register of the Treasury Department, do hereby certify that the annexed copies of Interior warrants Nos. 2006 & 642, with copies of the drafts issued upon the same, thereto attached, are true copies of the originals on file in this office.

JOHN ALLISON,
Register.

29 Be it remembered that John Allison, esq., who certified the annexed transcript, is now, and was at the time of doing so, Register of the Treasury of the United States, and that full faith and credit are due to his official attestations.

In testimony whereof I, George S. Boutwell, Secretary of the Treasury of the United States, have hereunto subscribed my name and caused to be affixed the seal of this Department, at the city of Washington, this twentieth day of February, in the year of our Lord 1872.

{ SEAL OF. TREASURY DEP'T. }

GEO. S. BOUTWELL,
Secretary of the Treasury.

TREASURY DEPARTMENT.

Interior warrant No. 2006. Settlement, $2,282.36.

Appropriations: Trust-fund. Interest due Choctaws' general fund, $2,282.36.

To the Treasurer of the United States, greeting:

30 Pay to Reuben Wright, care of Watterson & Crawford, Washington, D. C., or order, to be charged to the appropriations named in the margin, two thousand two hundred and eighty-two dollars and thirty-six cents, due on settlement, pursuant to requisition number 8932 of the Secretary of the Interior, dated Nov. 8, 1867, countersigned by the Second Comptroller of the Treasury, and registered by the 2d Auditor. And for so doing this shall be your warrant.

Given under my hand and the seal of the Treasury Department this 9th day of November, in the year of our Lord one thousand eight hundred and sixty-seven, and of Independence the ninety-second.

J. H. S.

J. F. HARTLEY,
Assistant Secretary of the Treasury.

R. & E. 9.

Countersigned.

R. W. TAYLOR,
First Comptroller.

Registered, 9.
J. R.

N. L. JEFFRIES,
Register.

31 *Draft No. 95 on Departmant of the Interior, warrant No. 2006.*

$2,282.36 TREASURY OF THE UNITED STATES,
Washington, Nov. 9, 1867.

At sight, pay to Reuben Wright, or order, two thousand two hundred eighty-two $\frac{36}{100}$ dollars.

L. R. TUTTLE,
Asst. Treasurer of the United States.

No. 95. Registered Nov. 9, 1867.

N. L. JEFFRIES,
Register of the Treasury.

ASST. TREASURER U. S., *New York.*

Written across the face:
Paid Nov. 15, 1867. Assistant treasurer at New York.

(Endorsed:)
REUBEN WRIGHT.
L. S. LAWRENCE & CO.

OFFICE OF THE TREASURER OF THE UNITED STATES.
Received for this warrant the following draft No. 95 on N. Y.
WM. J. BROMWELL,
For Watterson & Crawford.

32 TREASURY DEPARTMENT.

Interior warrant No. 641. Settlement $18,258.92. Appropriations: Trust-fund. Stock redeemed and due Choctaw school-fund, 18,258.92.

To the Treasurer of the United States, greeting:

Pay to Reuben Wright, present, or order, to be charged to the appropriations named in the margin, eighteen thousand two hundred and fifty-eight dollars and ninety-two cents, due on settlement pursuant to requisition number 255 of the Secretary of the Interior, dated June 3d, 1869, countersigned by the Second Comptroller of the Treasury, and registered by the 2d Auditor. And for so doing this shall be your warrant.

Given under my hand and the seal of the Treasury Department this 4th day of June, in the year of our Lord one thousand eight hundred and sixty-nine, and of Independence the ninety-third.

33 J. H. S. J. F. HARTLEY.
Assistant Secretary of the Treasury.

R. &. E. 5.
Countersigned.

R. W. TAYLOR,
First Comptroller.

Registered 8.
J. R.

J. A. GRAHAM,
Actg. Register.

OFFICE OF THE TREASURER OF THE UNITED STATES.

Received for this warrant the following draft, No. 2495, on New York.

REUBEN WRIGHT,

[G. C. C.

Draft No. 2495. *On Department of the Interior.* *Warrant No.* 642.

$18.258.92. TREASURY OF THE UNITED STATES,
Washington, June 5, 1869.

At sight pay to Reuben Wright, or order, eighteen thousand two hundred and fifty-eight and $\frac{92}{100}$ dollars.

L. R. TUTTLE,
34 *Assistant Treasurer of the United States.*

No. 2495. Registered June 5, 1869.

J. A. GRAHAM,
Actg. Register of the Treasury.
ASSISTANT TREASURER U. S., *New York.*

(Endorsed :) Pay to Riggs & Co., or order.

REUBEN WRIGHT.

Pay Bank of America, New York, or order.

RIGGS & CO.
J. PUNNOTT.

Paid January 7, 1869.

To which defendant objected, and the court overruled said objection, and admitted said testimony; to which ruling the defendant excepted, and prays the court to sign, seal, and enroll this his first bill of exceptions; which is done accordingly, this 26th day of February, 1872, now for then.

ARTHUR MACARTHUR, [SEAL.]
Justice.

35 SECOND BILL.

And after the signing and sealing of defendant's said first bill of exceptions, which is made part thereof, the plaintiff rested; and the defendant thereupon prayed the court to instruct the jury that, on the evidence, the plaintiff was not entitled to recover; which the court refused to do. And to said ruling by the court said defendant excepts, and prays the court to sign, seal, and enroll this his second bill of exceptions; which is done accordingly, this 26th day of February, 1872, now for then.

ARTHUR MACARTHUR, [SEAL.]
Justice.

THIRD BILL.

And after the signing and sealing of defendant's said second bill of exceptions, which is made part hereof, the defendant offered and gave evidence showing that, at the time when he made and delivered said above mentioned writing, he supposed, and was advised by said plaintiff, that allowance of said claim had then been secured,
36 and payment would immediately be made, and that therefore he made said agreement; that, subsequently, he encountered the delay and opposition above mentioned, and he had to employ counsel, who attended to the taking of testimony and presentation of said claim

before the commissioners, Indian Bureau, Secretary of Interior, and congressional committees, to which counsel he paid between $5,000 and $6,000; and one of said counsel, introduced as a witness by the defendant, on being cross-examined, testified that his firm was so employed by the defendant before the plaintiff was employed by him.

And thereupon defendant rested, and defendant then prayed the court to instruct the jury as follows:

"The contract was for securing the claim. If the claim was not then secured by the plaintiff's services, and the plaintiff did nothing
37 more, the consideration failed and the contract is void."

But the court refused to give such instruction; to which ruling defendant excepts, and prays the court to sign, seal, and enroll this his third bill of exceptions; which is done accordingly, this 26th day of February, 1872, now for then.

ARTHUR MACARTHUR, [SEAL.]
Justice.

FOURTH BILL.

And after the signing and sealing of said third bill of exceptions, which is made part hereof, the defendant prayed the court to instruct the jury as follows:

"If the jury believe from the evidence that, at the time the contract was entered into, it was represented to the defendant that the claim of the defendant had been secured by the plaintiff's services, and that such
38 representation was material to the contract and embodied in it, and that such representation was untrue, then the plaintiff cannot recover." But the court refused to give said instruction; to which refusal defendant excepts, and prays the court to sign, seal, and enroll this his fourth bill of exceptions; which is done accordingly, this 26th day of February, 1872, now for then.

ARTHUR MACARTHUR, [SEAL.]
Justice.

Proceedings before the supreme court of the District of Columbia, in general term, at september term, 1872, commencing on Monday, the 23d day of September, 1872.

Present, Chief-Justice Cartter, and justices Wylie and Humphreys.

39 MONDAY, *September* 23, 1872.

By order of the court, the session is announced by proclamation of the marshal.

SATURDAY, *November* 9, 1872.

Session resumed pursuant to adjournment. Present, Chief-Justice Cartter, and Justices Wylie, Humphreys, and MacArthur.

JAMES M. TEBBITTS, PLFF.,
v.
REUBEN WRIGHT, DEFT. } At law. No. 5841.

And now come here, as well the plaintiff as the defendent, by their respective attorneys, and thereupon, because it seems to the court that there is no error in the record and proceedings of the special term or circuit court, it is considered that the defendent's aforesaid motion for a new trial be, and the same is hereby, overruled; and that the plaintiff recover against the defendant two thousand and fifty-four dollars, in

40 manner and form aforesaid found, with interest thereon from June 5, 1869, and $42.15 costs of suit, and have execution thereof.

41 In the supreme court of the District of Columbia, the 19 day of June, 1873.

REUBEN WRIGHT *vs.* JAMES M. TEBBITTS. } At law. No. 5841. In error.

Know all men by these presents that we, Reuben Wright, James W. Moore, & M. Thompson are bound to the above-named James M. Tebbitts in the sum of two hundred dollars, to be paid to the said James M. Tebbitts, his executors, or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 19 day of June, 1873.

Whereas, the above-named Reuben Wright, hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is, that if the above-named Reuben Wright shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

REUBEN WRIGHT. [SEAL.]
J. W. MOORE. [SEAL.]
M. THOMPSON. [SEAL.]

Sealed and delivered in presence of—

Approved June 19, 1873.

D. C. HUMPHREYS,
Justice S. C. D. C.

42 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief-justice and justices of the supreme court of the District of Columbia, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between Jonas M. Tebbitts, plaintiff, and Reuben Wright, defendant, No. 5841, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears; and it being fit that the error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf: Therefore, you are hereby commanded, if judgement be therein given, under your seal, distinctly and openly, to send the record and proceeding aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the honorable Nathan Clifford, senior associate justice of the Supreme Court of the United States, this 19th day of June, in the year of our Lord 1873, and of the Independence of the United States the 97th.

R. J. MEIGS, *Clerk.*

DISTRICT OF COLUMBIA, *to wit:*

To Jonas M. Tebbitts:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein Reuben Wright is plaintiff and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness D. K. Cartter, chief-justice of the said supreme court of the District of Columbia.

D. K. CARTTER, *Chf. Jst.*

Service acknowledged, Sept. 25, 1873.

R. D. MUSSEY,
Atty. for Tebbitts.

43 OFFICE OF THE CLERK OF THE SUPREME COURT
OF THE DISTRICT OF COLUMBIA,
September 22d, A. D. 1873.

I certify that the foregoing is truly copied from originals on file and of record in the office, which originals together constitute the record and proceedings of the said supreme court of the District of Columbia in the case mentioned in the writ of error to which this certificate is annexed.

Witness my hand and the seal of said court, the day and year aforesaid.

[SEAL.] R. J. MEIGS, *Clerk.*

(Indorsement on cover:) No. 324. Reuben Wright, plaintiff in error, vs. Jonas M. Tebbitts. Dist. of Columbia sup. ct. Filed 7th November, 1873.

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

REUBEN WRIGHT, Plaintiff in Error,

v.

JONAS M. TEBBITTS, Defendant in Error.

No. 98.

I. The suit was brought to recover $2,054, and, although there were general counts, which had no application to the case, and some special counts, which made no allusion to the paper, the claim was based upon a contract in writing in these words:

"Jonas M. Tebbitts having rendered valuable services to me in securing my claims under the 50th article of the treaty of Apl. 28th, with the Choctaw and Chickasaws, I hereby bind myself to pay him one-tenth of whatever I may realize from the Choctaw Indians under said article, whenever the money comes into my hands, which payment, when made, will be in full compliance with my verbal contract made in April last with John B. Luce.

"REUBEN WRIGHT.

"In the presence of—
"J. B. LUCE."

II. We may as well here remark that the article of this treaty was as follows:

Whereas, Joseph G. Heald and Reuben Wright, of Massachusetts, were licensed traders in the Choctaw country, at the commencement of the rebellion, and claim to have sustained large losses on account of said rebellion, by the use of their property by said nation, and that large

sums of money are due them for goods and property taken, or sold to the members of said nation, and money advanced to said nation; and whereas other loyal citizens of the United States may have just claims of the same character, it is hereby agreed and stipulated that the President of the United States shall, within three months from the ratification of the treaty, appoint a commission, to consist of one or more discreet persons, to investigate said claims, and fully examine the same; and such sum or sums of money as shall by the report of said commission, approved by the Secretary of the Interior, be found due to said persons, not exceeding ninety thousand dollars, shall be paid by the United States to the persons entitled thereto, out of any money belonging to said nation in the possession of the United States: *Provided*, That no claim for goods or property of any kind shall be allowed or paid, in whole or in part, which shall have been used by said nation or any member thereof in aid of the rebellion, with the consent of said claimant: *Provided also*, That if the aggregate of said claims thus allowed and approved shall exceed said sum of ninety thousand dollars, then that sum shall be applied *pro rata* in payment of the claims so allowed.

So that it is to be gathered from the counts proper, that the true character of the transaction was, that Wright had previously bargained with John B. Luce and Tebbetts that he would give them one-tenth of what they might recover to prosecute the claim, and the writing was to acknowledge that fact.

III. The evidence relied on by the plaintiff was this contract (sec. 1) and certain records of the Treasury Department, which establish that Wright had received $20,540 upon his claim under this 50th article of the treaty of 1866, between the United States and the Choctaw Indians. Beyond this, and the fact that the plaintiff below was a lawyer, and had rendered services on one occasion, about the value of which the plaintiff offered no other evidence; so that the plaintiff's case rested upon the proof of some anterior services upon the written contract and the fact that Wright had received a certain amount of money upon the claim. And the the first question is the right to recover upon such a contract.

To pursue, however, the bills of exception, the first relates to the admission in evidence of the contract, which had not been declared on, but was offered to support the special count for services rendered before the commission appointed under the 50th article of the Choctaw treaty, and a special count upon a promise to pay ten per cent. for such services; and also the admission in evidence of the record which established that Wright had received certain moneys upon his claim. If the contract was illegal, being for services rendered before a tribunal, where counsel had no right to appear, or where it was against public policy that they should appear, then it was certainly improper to admit such illegal contract in evidence.

This point is more directly saved by the second bill of exceptions, (page 12,) which shows that the plaintiff below having rested upon the foregoing evidence, the defendant prayed the court to instruct the jury that the plaintiff was not entitled to recover, which the court refused. This brings up clearly the question of the sufficiency of such contract to support an action. And also the general principle that, if it was against good morals, if it was champertous in its nature, because it was for a part of the fund to be secured by the counsel, or if it was against public policy to allow such contracts to influence the commission, touching claims against Indian funds, then it was a nullity, will not be denied.

IV. The plaintiff therefore assigns for error:

1. That the court admitted the instrument of 9 April, 1866, in evidence, (Record, p. 6;) and also to the admission of the other evidence set forth in the bill of exceptions No. 1.

2. To the refusal of the court to instruct the jury that upon the case made and proved by the plaintiff below he had no right to recover. (Bill of Exceptions, No. 2, p. 12.)

3. In refusing to instruct the jury that the consideration for the contract had failed. (pp. 12, 13.)

4. In refusing in effect to instruct the jury that, if the

contract was procured by the false representations of the plaintiff, he could not recover. (p. 13.)

V. The first and second assignments may be considered together, as they go to the very foundation of the action. They assume that the instrument upon which this plaintiff rested his case was a nullity, because it was, in effect, to assign to the plaintiff below one-tenth of his claim, and that upon a bargain which was champertous in itself.

Such contracts come clearly within the inhibitions of our statute of 26th February, 1853, rendering absolutely null and void the transfer of all claims against the Government, (Brightly's Digest, p. 132, now embodied in the Revised Statutes, secs. 3,477,) or of any interest therein, whether absolute or conditional, and whatever may have been the consideration therefor, and all powers of attorney, *orders*, or other authorities for receiving payment of any such claim, or any part or share thereof, unless the same shall be freely made and executed in the presence of at least two attesting witnesses, *after* the allowance of such claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. (Brightly's Digest, p. 132.) Taking the paper according to its reason and spirit, and it certainly was an attempt to transfer or to give authority to receive one-tenth of the claim. This statute is cited and expounded in Trist *v.* Childs, 21 Wall., 447.

The general principles may be thus stated:

"By the Code Napoleon, one of the conditions essential to the validity of every contract is lawful cause. (p. 304.) The cause is unlawful when it is prohibited by law; when it is contrary to good morals or to public policy. (p. 309. Same doctrine, 1 Pothier, 62.)

"In Partidas 5, tit. 11, law 28, it is said that every contract made contrary to law or good morals, though under a penalty of an oath, ought not to be observed; thus holding the obligation not to violate the law paramount to that imposed by an oath.

"It may be urged that, for certain causes, the enforce-

ment of a contract may be suspended without invalidating the contract; and, further, that if the impediment to contracting exist, at the time it is entered into, it invalidates the contract, even after the removal of the impediment. But the current of authority is now destructive of any such distinction, holding all contracts against law alike invalid. (Chit. on Con., pp. 230, 231; Gallina *v.* Laborie, 5 Term., 242; Bensley *v.* Bignold, 5 B. & A., 335.) In the English courts there is no longer any distinction between a law merely forbidding an act and one forbidding under a penalty. The same authority will show that the distinction once attempted between things *mala prohibita* and *mala in se* cannot be sustained, and either invalidates a contract.

"It has long been settled that a promise made in consideration of an act which is forbidden by law is void. (Craig *v.* Misiouri, 4 Pet., 430.) The chief justice refers to the case of McElyea *v.* Hayter, 2 Port., Ala., 145; Armstrong *v.* Toler, 11 Wheat., 528; Springfield Bank *v.* Merrick, 14 Mass., 322; Hunt *v.* Knickerbocker, 5 Johns., 327; and held that the Missouri loan office certificates, being bills of credit, which the States are forbidden to issue, were nullities, and the loan of them was no consideration of a note. And see *Hunt* v. *Robinson*, 1 Tex., 760.

The very latest review of the authorities is by Mr. Justice Swayne, in Thomas *v.* Richmond, 12 Wall., 353–358. It reviews the leading case of Smith *v.* Bromley, 2 Doug. 696, and other like cases where a distinction is conceded, whereby a party is permitted to recover back the money paid upon an illegal contract. But, coming to the very principle of a contract prohibited by law, the learned jndge says; "But if the parties are *in pari delicto*, as if the consideration, as well as the bills or other obligations, is tainted with illegality or immorality, as it would be if loaned or advanced for the purpose of aiding in any illegal or immoral transaction, or if the receiving as well as passing or issuing of the bills is forbidden by law, then the holder is without legal remedy, and the parties are left to themthemselves." (Page 356.)

And Texas *v.* White, 7 Wall., 700, and Harrover *v.* Doane,

12 Wall., 342, are cited in support of the principle. The last-named case carries the principle to its full length. (12 Wall., 341, 343,)

And in Koppell *v.* Hall, 7 Wall., 554, it was held that a contract contrary to public policy was void.

So, although a note may have been given, or a ratification made of an illegal contract, the new contract stands upon no better footing than the old. Brown *v.* Tarkington, 3 Wall., 381. And giving effect to the reference to the contract made with John B. Luce, this is our case.

The same principle is more broadly enforced in Tool Company *v.* Norris, 2 Wall., 54–56, upon the precedents of Marshall *v.* Baltimore and Ohio Railroad Company, 16 How., 314; Harris *v.* Koop, 10 Barb., 489; Fuller *v.* Darne, 18 Pick., 472. All these cases proceed upon the general principle that the contracts need not be prohibited by law. It is enough if they be contrary to public policy, may introduce new elements into the action of the Government, and might (not that they have) affect resnlts.

And the authorities are everywhere that if a contract be against law, be prohibited by law, be against good morals or public policy, it is void. (Bank of the United States *v.* Owen, 2 Pet., 527; Harris *v.* Runnels, 12 How., 79; Marshall *v.* Railroad, 16 How., 334; Wilney *v.* Huber, 3 McLean, 212; Kennett *v.* Chambers, 14 How., 38; Wilson *v.* Leroy, 1 Brock, 447; Pratt *v.* Oliver, 1 McLean, 295; S. C., 3 How., 333; and see the cases collected in Brightly's Federal Digest, CONTRACTS, secs. 169–249.)

This case is certainly within the searching review of Trist *v.* Childs, 21 Wall., 446. That case so completely exhausts the authorities, that further citations cannot be necessary.

VI. The character of the services rendered, or to be rendered, were contrary to public policy, and such as to vitiate the contract. They were services to swell the amount of a claim against the Choctaw funds in the hands of the United States; the plaintiff was to become the ad-

vocate to plead before the agent of the trustee against the *cestui que trnst.* The United States stood guardian for the Indians; and they had no right to permit this interference against their wards. It was no tribunal for counsel.

VII. Equally fatal to the claim is the fact that it was a bargain to pay to the plaintiff one-tenth of all that the plaintiff should receive out of a particular fund. This comes within the precise definition of champerty. (4 Blackst. Comm., 735; 1 Inst., 368; Boldin *v.* Pitkin, 2 Caine, 149; Hunt *v.* Hale, 8 Yerg., 142.)

Those pests of society that are perpetually endeavoring to disturb the repose of their neighbors, and officiously interfering in other men's quarrels. (4 Blackst. Comm., 135; 2 Story's Eq., § 1309.) And, moreover, while the contract recites, that the contract was for services, there was no evidence of the value of those services. A charge of $2,000 for appearing once before a special commissioner, if any charge was allowable, was extortionate. A promise to pay for which there is no consideration i
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VIII. But there was evidence tending to prove that the consideration of the contract, such as it was, was obtained by fraud and mistake; for that the defendant below "supposed, and was advised by said plaintiff, that allowance of said claim had been secured and payment would immediately be made; and that, therefore, he made such agreement; that, subsequently, he encountered delay and opposition," and had to encounter the delays and pay the expenses which are set out in the record. Certainly such proof justified the instruction asked and refused, to the effect that the consideration of the contract had failed. And if there really was fraudulent representation, or mistake, or failure of consideration, the contract was vitiated; and whether there was or not should have been left to the jury.

Such contracts are certainly not to be encouraged. They are chance bargains, and generally, as in this case, for an exorbitant amount, and such as ought not to have standing in a court of justice. Respectfully submitted,

GEO. W. PASCHAL,
J. W. MOORE,
For Plaintiff in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

No. 98.

REUBEN WRIGHT, PLAINTIFF IN ERROR,

vs.

JONAS M. TEBBITTS, DEFENDANT IN ERROR.

THE FACTS.

Judge Tebbitts, in 1866, professionally presented Wright's claim to compensation under an Indian Treaty before a duly appointed Commission, whereupon Wright gave him a "Contract," or Memorandum of debt, to pay for that service, one-tenth of the amount he recovered when he recovered it. He got $20,540 and declined to pay Tebbitts' fee. Thereupon Tebbitts sued him in the Supreme Court of the District of Columbia, and got judgment for $2,054.00.

THE PLEADINGS.

The declaration has three counts. 1st. The common counts; 2d. A special count upon the services rendered; 3d. Upon the contract. A bill of particulars accompanies the declaration, stating that the suit was to recover for professional services at rates of compensation fixed by Wright himself.

Numerous pleas in bar were filed, on which issue was joined.

Points.

1. Tebbitts rendered professional services to Wright.
2. He had a right to be paid for them.
3. Wright himself fixed the rate by his "Memorandum of Debt" or "Contract."
4. This "Contract" was admissible evidence to prove the value of the services under the "common counts; it was so used and—
5. The Jury found that the services were worth what Wright had said they were.

Reply to Plaintiff in Error.

1. Objection was made to the introduction of certified copies from the Treasury Department. They were competent under the Laws (Sec. 882, Rev. Sts. U. S.), and their force was a question for the Jury.

2. Wright's demurrer to the evidence was not sustained. Nor should it have been. The evidence would support a verdict—and there was nothing in the evidence to show any immorality or illegality, nor was the question raised or suggested below; and it is only brought into the case here by the iugenuity of counsel unaided by anything in the record.

The case of Wylie *vs.* Coxe, 15 How., 415, is in point, and settles the legality of Tebbitts' claim.

3. Error is assigned in that the Court refused "to instruct the Jury that the consideration for the contract had failed."

Whether it had failed or not would seem to be a question of fact to be ascertained by the Jury; and not to be determined by the Court. The instruction actually called for, was for a construction of the "contract" or that part of it that uses the words, "securing my claims," which was inconsistent with the "contract" and was properly refused.

Moreover, if the "contract" had utterly failed, it would not have defeated Tebbitts' recovery on the common counts.

4. The last error assigned is "in refusing in effect to instruct the jury that if the contract was procured by the false representations of the plaintiff he could not recover."

This instruction was not asked, but one in general terms that "if, &c., it was represented to the defendant that the claim, &c., had been secured," &c.

To have given such instruction would have been error. It would have been to say that if anybody, no matter who, had made misrepresentations to Wright, they should enure to Tebbitts' disadvantage!

How a different prayer would have fared need not be considered. The one asked was properly rejected.

R. D. MUSSEY.